THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.8827 of 2007

Dated: 08-10-2007

Between:

Kosaraju Sredhar.

..... PETITIONER

AND

The Divisional Manager, The National Insurance Co., Limited, Eluru, and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.8827 of 2007

ORDER:

This writ petition is filed for a writ of Mandamus declaring the inaction of first respondent in paying the amount which was deducted by second respondent from the petitioner's vehicle heir bills as illegal and arbitrary.

Kota Subbarao, learned counsel for first respondent, submitted that in the light of the decision in ***Life Insurance Corporation of India v. Kiran Sinha***[1], writ petition of this nature cannot be maintained. A counter-affidavit also is filed by first respondent. It is stated that the petitioner is the owner of bus bearing No.AP16 7900. Said vehicle was hired by second respondent on certain terms and conditions. Said vehicle was insured with first respondent. It is also stated that above said vehicle was met with an accident on 25.10.2001 at about 11.15 am at Eluru, West Godavari District. It is further submitted that one Chekka Appala Naidu injured in that accident. Said injured person filed an O.P.No.823 of 2001 before the motor accidental claims tribunal (District Judge, West Godavari, Eluru) praying to pass an award for a sum of Rs.1,50,000/- towards compensation for the injuries sustained by him. It is also stated that said O.P.No.823 of 2001 dated 21.02.2005 was allowed in part granting compensation of Rs.66,000/- with proportionate cost and interest at the rate of 9% per annum from the date of petition till the date of realization. It is further stated that second respondent vide proceeding No.S.P/785 (8)/2006-Spl 4-5-2006 deducted an amount of Rs.91,319/- from the petitioner vehicles hire bills. It is also stated that the petitioner's vehicle was insured with first respondent as per norms of insurance policy the insurer is bound to pay the compensation award which was deducted by second respondent. It is further submitted that the petitioner issued a legal notice to first respondent and demanded to pay an amount of Rs.91.319/- with interest at the rate of 12% per annum from the date of deducting that is 4-5-2006. But first respondent

forgotten his liability and did not pay the amount. In such circumstances, the petitioner approached this Court.

In the counter-affidavit filed on behalf of first respondent, it is averred that this respondent admits that the bus bearing No.AP16 7900 was insured with it but it is used subject to the terms and conditions thereon. This respondent is not liable to pay any amount whether to the petitioner or to second respondent-APSRTC. It is further stated that it is mentioned in the affidavit that the claimant Mr.Chukka Appala Naidu has filed O.P.No.523 of 2001 before the Motor Vehicle Accident Claims Tribunal (District Judge), West Godavari, Eluru, to pass the award of Rs.1,50,000/- as compensation for the injuries sustained by him. As per the copy of the order filed by the petitioner himself, though the award of Rs.66,000/- with proportionate costs and interest at 9% was granted, the award is passed against second respondent. There is no award or decree against this respondent even in said O.P. It is also stated that this respondent is not award under what circumstances the amount of Rs.91,319/- was deducted by second respondent towards hire bills. Further, specific stand had been taken that a direction to realize the amount cannot be granted under Article 226 of the Constitution of India and hence the writ petition is not maintainable.

In the light of the specific stand taken in the counter-affidavit and also in view of the circumstances, this Court is of the considered opinion that the remedy by way of writ petition is a misconceived remedy. Hence, liberty is given to the petitioner to pursue the other legal remedies available to him in Law.

Accordingly this writ petition is disposed of. No costs.

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(**P.S.NARAYANA**)

08th October, 2007
ghn

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[1] 1985 ACJ 657